

# Horizon scanning report

(Covers the period 12 March to 11 April 2018)

## The top five

**The SRA has begun a consultation on major changes to its professional indemnity insurance (PII) and compensation fund arrangements.** It proposes to reduce the compulsory level of PII to £500,000 – although conveyancers would have to secure £1m in cover. Its planned reforms to the Compensation Fund aim to turn it explicitly into a ‘hardship’ fund with relatively wealthy people unable to claim on it. The maximum pay-out under the fund would reduce from £2m to £500,000. The SRA said its consultation would be framed by the question of what the profession should provide by way of consumer protection for financial loss, and how cost and access to legal services should be balanced.

The LSB has approved the application from the SRA related to the proposed introduction of a **Solicitors Qualifying Examination**. The introduction of the SQE does not automatically follow from our approval. The SRA will have to submit and the LSB will have to approve further rules change applications. The SRA expects to apply to the LSB in 2019 for approval of these further rules, which will contain detail on its proposals for implementing the SQE.

**In its response to the call for evidence on improving the home buying and selling process the government has decided not to ban referral fees in conveyancing,** but it will look more closely at the case for a ban and it wishes to standardise the presentation of referral fees. The National Trading Standards Estate Agency Team is tasked with proactively monitoring the disclosure of referral fees. To help consumers make an informed choice of conveyancer, the government will work with industry and consumer groups to develop solutions using more transparent data, standard metrics, kite marks and quality standards. Other decisions include: consult on creating a mandatory professional qualification for estate agents; encourage sellers to make more information about properties available up front; introduce reservation agreements between buyers and sellers to reduce the number of sales that fall through; and promote use of technology to assist with digital signatures, ID verification and e-conveyancing. An industry group will be set up to implement the changes.

**The UK and EU have agreed on a ‘large part’ of the agreement that will lead to the UK withdrawing from the EU.** A key aspect of the agreement is a transitional period that will last from Brexit day on 29 March 2019 to 31 December 2020. As part of the withdrawal agreement any lawyers within the scope of the citizens’ rights agreement who have become part of the host profession in the member state will remain recognised and able to practise. The same rules as apply now will be in place during the transitional period.

Jeremy Miles, counsel general for Wales, has said **Wales could become the first part of the UK to have a codified corpus of law** under proposals to be discussed by the Welsh government to tackle confusion caused by growing divergence from England. This would involve the National Assembly producing US-style codes enabling all the statute law on a subject to be found in one place. Thereafter any amendment would be by amendment of the code, which would remain an up-to-date statement of the applicable legislation.

## Political developments affecting the justice sector

**Alison Saunders, Director of Public Prosecutions, will stand down** in October 2018 after serving her five year term. She will leave the CPS to join Linklaters.

**The Lord Chancellor has said more judges should be appointed from the ranks of solicitors.** Only one judge in the Court of Appeal is a solicitor and only one solicitor-judge, now retired, has made it to the bench of the Supreme Court.

**Nicola Mackintosh QC, co-chair of the Legal Practitioners Group, has warned a Parliamentary committee about threats to the profession's independence over legal aid funding decisions.** The concerns relate to the practice of referring high-profile applications for legal aid to a special unit in the Government Legal Service and the introduction of a so-called 'embarrassment' clause into criminal legal aid contracts which binds practitioners not to engage in 'any unprofessional or unlawful conduct... likely to diminish the trust the public places in the legal aid scheme'.

**The Civil Liability Bill has started its legislative passage.** It will reform whiplash claims and changes the way the discount rate applied to personal injury settlements is calculated. The Lord Chancellor pledged that motorists will save an average of £35 from their car insurance premiums as a result of the changes. The Ministry of Justice's impact assessment estimates that claimant lawyers would lose £80m in lost fees a year and projected that the reforms would cost claimants £990m in lost compensation and having to pay legal fees out of their damages, while legal expenses insurance premiums would rise by £120m a year.

**The Criminal Bar Association (CBA) has called on members to consider refusing instructions on all criminal law cases** subject to a representation order dated on or after 1 April 2018, the implementation date of the revised advocates' graduated fee scheme (AGFS) scheme. The CBA has called on the MoJ to delay or suspend the AGFS scheme. A survey of over 4,000 barristers by the Bar Council found that over a third of criminal barristers were dissatisfied with their careers and considering alternatives or planning to leave.

## Regulatory and wider policy developments

**CILEx has appointed four new lay members to its group board.** They are Dame Elizabeth Filkin (former Parliamentary Commissioner for Standards), Doris Olulode (HR professional), Stephen Lee (Cass Business School) and Jagjit Dosanjh-Elton (chief operating officer at chartered surveyors Anstey Home).

**The BSB wishes to change how it deals with information it receives from third parties about barristers and chambers, including abandoning the term 'complaints'.** It says its complaints terminology is confusing for the public and creates inaccurate expectations that its remit includes resolution of their personal concerns. The consultation proposes the creation of a Centralised Assessment Team to act as the single point of contact for all unprompted information. It is also considering establishing a new Independent Decision-Making Body (IDB) to replace the Professional Conduct Committee. The new IDB would consist of a pool of 30 lay and barrister members from which panels of three or more will be nominated to take individual regulatory decisions.

**The OLC has exercised for only the second time its power to name "in the public interest" an organisation responsible for dozens of complaints and warned consumers not to use it.** In the year to 31 January 2018, LeO has resolved 69 complaints

about Claimline Direct UK Limited (CLD) and received over 100. CLD is a Swansea-based regulated claims management company that deals with mis-sold PPI.

**India's Supreme Court has given a limited concession to foreign lawyers, by allowing them to enter India on behalf of clients and to act in international arbitrations.** India is one of the last major jurisdictions in the world to restrict legal practice to its own nationals. While the scope of "fly in and fly out" will only cover a casual visit not amounting to practice, commentators consider the judgment has ended a state of limbo which could lead to a more radical opening up of the market by legislators.

**Paul Philip has warned that a single 'get-rich-quick' investment scheme that goes bad could wipe out the SRA's £48m compensation fund.** He cited schemes that 'offer a 15% return in a year from investing in car parking spaces, hotel rooms, or housing estates in Bulgaria that don't exist'. Hundreds of millions of pounds can be funnelled through the client account by 'one-man band' firms that disappear, leaving the client high and dry.

**The Law Society has proposed a 3% rise in the minimum pay for trainees** - many already work below the existing recommended minimum rate. The SRA abolished the mandatory minimum salary in 2014, though it insists that firms pay at least the statutory minimum wage rather than apprenticeship rates.

A new report commissioned by the Law Society and produced by Professor Donald Hirsch of Loughborough University has claimed that the **legal aid means test leaves some people who cannot reasonably afford to pay for legal services without effective access to the courts.** The Society said this principle is required by the common law, as set out in the July 2017 Supreme Court judgment in response to a legal challenge by the trade union Unison, and has called on the Ministry of Justice to review the means testing regime.

UCAS data has shown the **number of law students both applying to and accepting places at UK universities has increased with seven universities taking on more than 500 students last year.** This rise is in contrast to a slight fall in students accepting places to study all subjects; indeed, acceptances have increased by 12% since the increase in tuition fees in 2012. Liverpool's Law School had the largest new intake at 590 students. BPP Law School has seen a dramatic decline in acceptances (105 in 2017 versus 535 in 2015).

Giving evidence to the House of Lords constitution committee, **Baroness Hale, President of the Supreme Court, said future judges should be appointed from non-traditional backgrounds** to not only improve diversity but overcome misconceptions about what a good applicant looks like. She also said the Supreme Court shares widespread concern that High Court vacancies have remained unfilled for two consecutive competitions.

**The BSB has decided to maintain the role of Inns of Court in the training of barristers.** This follows a consultation last year which contemplated a major overhaul in this area, but the consultation outcome will largely preserve the status quo.

The SRA has published findings of a **thematic review on payment protection insurance.** It found that four out of five firms are routinely charging fees of more than 25% of the redress awarded. An SRA warning notice, issued in August 2017, stated that charging more than 15% could be considered unreasonable, unless justified by the work and risk involved, while the Government's Financial Guidance and Claims Bill is likely to include a 20% fee cap.

**HMCTS has launched a new online service to make it quicker and easier for people to claim money owed, resolve disputes out of court and access mediation.** More than 1,400 people have already used an earlier pilot of the system launched in August last year.

The move is part of the Government's £1 billion investment to modernise the court service. Claims for up to £10,000 can be made using the new service.

## Market developments

**The world's biggest litigation funder, AIM-listed Burford Capital, has unveiled spectacular results for 2017, with net profit after tax up 130% to £190m and new investments totalling nearly £1bn**. The new investments last year mean that Burford now has £2.4bn in litigation. This is made of up 82 separate investments and 877 underlying claims – illustrative of a trend away from funding individual cases towards multi-case portfolio investments. However, Burford agreed to just 59 of 1,561 requests for capital suggesting that it chooses cases selectively. Its annual report suggests that London's prominence as a global litigation centre is being undermined by a combination of Brexit and its use of adverse costs rules.

**North Yorkshire County Council has become the latest local authority to set up an ABS with the launch of First North Law**. The council said the law firm would support the council's commercial growth with its expanding portfolio of services offered to external markets, which include initiatives in education, waste disposal, broadband, information governance and auditing and in property.

**The Co-op has acquired Simplify Probate, the UK's second largest provider of probate, as it bids to become the dominant player in the market**. It has also unveiled a 13.6% increase in legal services turnover for 2017.

**The UK's top 100 law firms grew fee income by 7.7 per cent in the third quarter**, according to a survey by Deloitte. It said that the growth was driven by expansion in fee earner headcount and higher fees per fee earner, with both increasing by about 4 per cent.

## Market intelligence and research

**More than half of young legal aid lawyers are earning less than £25,000 a year**, yet more than a quarter start their careers carrying more than £35,000 debt as a result of their education, according to a survey by the Young Legal Aid Lawyers group. Its report, *Social mobility in a time of austerity*, found low salaries were a "significant barrier", although the sector still held an attraction for idealistic recruits.

**Research on the conveyancing market by the SRA** has found that while most customers (76%) are satisfied with the legal services they receive when buying or selling a property, there are concerns over the quality and timeliness of information being provided to them during the process. It also found more needs to be done to help people make informed decisions when choosing a conveyancing solicitor, especially for first-time buyers who have limited experience of how property transactions work or what to look for in a provider.

A survey by the Economist Intelligence Unit has found **multinational companies with turnovers of over \$1bn are spending less than half their external legal budgets on large law firms**. Specialist firms accounted on average for 28% of their budgets, while freelance contributors and consultants took 18% and online platforms 13%. Cost was the most common "challenge" faced by corporations in dealing with law firms (48%), followed by lack of responsiveness (36%) and lack of familiarity with the business (35%).

**Market intelligence and research**  
**CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS**

Indicator of success	Source	2012	2013	2014	2015	2016	2017	2018
<i>Promoting the public interest through ensuring independent, effective and proportionate regulation</i>								
LSB expenditure	LSB	£4,578k	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k	
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	
Public trust lawyers to tell the truth <sup>o</sup>	LSCP	43% <sup>A</sup>	42%	43%	47% <sup>A</sup>	42% <sup>A</sup>	45%	
Public confident consumer rights protected <sup>o</sup>	LSCP	49%	46%	46%	50% <sup>A</sup>	46% <sup>A</sup>	48%	
<i>Making it easier for all consumers to access the services they need and get redress</i>								
No action when have legal issue: Individuals <sup>o</sup>	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals <sup>o</sup>	LSCP	22%	22%	24%	25%	25%	27% <sup>B</sup>	
Use of comparison/feedback sites: Individuals <sup>o</sup>	LSCP	1%	1%	1%	2%	2%	2% <sup>B</sup>	
Ease of shopping around: Individuals <sup>o</sup>	LSCP	57%	55%	54%	57%	57%	47% <sup>B</sup>	
Overall service satisfaction: Individuals <sup>o</sup>	LSCP	<b>79%</b>	<b>80%</b>	<b>79%</b>	<b>78%</b>	<b>80%</b>	<b>80%</b>	
Providers publish prices on websites <sup>o</sup>	LSB					18%	18%	
Consumers who do nothing when dissatisfied <sup>o</sup>	LSCP	42%	44%	44%	42%	35%	49% <sup>A</sup>	
Public confidence in complaining about lawyers <sup>o</sup>	LSCP	49%	44% <sup>A</sup>	45%	48%	43% <sup>A</sup>	44%	
No action when have legal issue: SMEs <sup>o</sup>	LSB		8%		9%		10% <sup>B</sup>	
Levels of shopping around: SMEs <sup>o</sup>	LSB						22%	
Ease of finding provider: SMEs <sup>o</sup>	LSB				25%		50%	
Lawyers perceived as cost-effective: SMEs <sup>o</sup>	LSB		12%		14%		11% <sup>A</sup>	
<i>Increasing innovation, growth and the diversity of services and providers</i>								
UK wide legal services turnover (uninflated)	ONS	£26.4bn	£27.2bn	£29.3bn	£30.5bn	£32.3bn	£31.8bn	
Number of active ABS	LAs	68	236	373	618	837	1,091	
Level of service innovation (over 3yrs) <sup>o</sup>	LSB				28%			
Regulation seen as barrier to innovation <sup>o</sup>	LSB				24%			
Firms state reduced prices in last 12 months <sup>o</sup>	LSB					4%	4%	
Net exports of UK legal services	ONS	£3.1bn	£3.4bn	£3.8bn	£4.4bn	£4.0bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	

KEY: <sup>o</sup> = Survey source, <sup>A</sup> = Significant differences to previous figure, <sup>B</sup> = Significant differences between oldest and newest figure